THE HON'BLE MS.JUSTICE G.ROHINI

WRIT PETITION No.19258 OF 1998

Between:

The A.P.State Electricity Board Employees Union,
Madanapalli Division, represented by its
Divisional Secretary M.Kodandapani,
Madanapalli, Chittoor District. ….Petitioner

Vs.

The Joint Collector, Chittoor, and seven others

……Respondents

THE HON'BLE MS.JUSTICE G.ROHINI

WRIT PETITION No.19258 OF 1998

O R D E R:

The petitioner - A.P.State Electricity Board Employees Union, Madanapalli Division, filed this Writ Petition seeking a writ of Certiorari to call for the records relating to the proceedings of the second respondent-Revenue Divisional Officer, dated 12.06.1998, and to quash the same being arbitrary and illegal.

The facts in brief are as under:

One K.Obulappa was assigned the land to an extent of Ac 5.26 cents situated in S.No.509/4 of B.K.Palle Village in the year 1933. On his death, the respondents 4 and 5 herein have continued in possession and enjoyment of the same not only as the legal heirs of the original assignee, but also on the basis of a registered gift deed executed by their father K.Obulappa during his life time. Subsequently, out of the said land, the petitioner-Union purchased an extent of Ac 5.00 cents of land from the respondents 4 and 5 under an agreement of sale, dated 25.04.1981, for a consideration of Rs.2,00,000/-. It is not in dispute that the entire sale consideration was paid and the petitioner-Union was put in possession of the land in question. However, since no registered document was executed, the petitioner-Union made an application to the third respondent-Mandal Revenue Officer, seeking regularization of the sale under Section 5-A of the Andhra Pradesh Rights in Land & Pattadar Passbooks Act, 1971 (for short ROR Act). Having considered the same, the third respondent passed an

order, dated 23.07.1990, regularising the sale and transferring the ownership in favour of the petitioner-Union. Aggrieved by the said order, the respondents 4 & 5 filed an Appeal before the Revenue Divisional Officer, however, the same was dismissed on 23.02.1996. Challenging the same, the respondents 4 & 5 preferred a Revision Petition before the Joint Collector, Chittoor. After hearing both the parties, the Joint Collector, Chittoor, by order, dated 08.06.1997 remanded the matter to the Revenue Divisional Officer, observing that though the revision petitioners (respondents 4 & 5 herein) had no claim on the land, the order of the Revenue Divisional Officer was not based on a thorough examination of facts, since the land involved in the transaction was an assigned land.

Pursuant thereto, the Revenue Divisional Officer-second respondent herein, after conducting fresh enquiry, passed the impugned order, dated 12.06.1998 under which, not only the order of the third respondent, dated 23.07.1990 made under Section 5-A of the ROR Act, as confirmed by the second respondent on 23.02.1996, was set aside, but the assignment in favour of K.Obulappa granted in the year 1933 was also cancelled and the third respondent was directed to resume the land to the Government within 24 hours.

Hence, this writ petition by the petitioner Union, contending, *inter alia*, that the impugned order was not only arbitrary and illegal, but also without jurisdiction since the second respondent has no authority to cancel the assignment made in favour of the original assignee K.Obulappa in the year 1933.

Before proceeding further, it is relevant to note that during the pendency of the Appeal against the order of the third respondent made under Section 5-A of the ROR Act, the petitioner-Union filed O.S.No.128 of 1996 on the file of the Court of the I Additional Junior Civil Judge, Madanapalle, against the respondents 4 to 8 herein,

for permanent injunction restraining them from interfering with the possession of the land in question. Even prior to that, the respondents 6 to 8 filed O.S.No.139 of 1993 on the file of the Court of the Senior Civil Judge, Madanapalle, for partition against the respondents 4 and 5. On the basis of a settlement arrived at between all the parties, both the said suits were disposed of in terms of the settlement, vide award dated 25.04.1998, passed by the Lok Adalat. As a matter of fact, the said award, dated 25.04.1998, was placed before the second respondent by the respondents 4 to 8 herein requesting to dismiss the appeal as not pressed. However, the second respondent declined to permit the appellants to withdraw the appeal, but proceeded on merits, which culminated in the impugned order, dated 12.06.1998.

Despite notice, the respondents 4 to 8 did not choose to file any counter affidavit opposing the writ petition.

A counter affidavit has been filed by the second respondent-Revenue Divisional Officer, stating that the sale in favour of the petitioner-Union by the legal heirs of the original assignee was contrary to the conditions of assignment and, therefore, the assignment was rightly cancelled under the impugned order. It is also stated that the mutation claimed by the petitioner-Union in the Revenue Records was null and void since the sale in their favour itself was illegal.

I have heard the learned counsel for both the parties and perused the material on record.

It is true that the land in question, which was purchased by the petitioner-Union in the year 1981, was assigned in favour of late K.Obulappa in the year 1933. However, the question is whether the prohibition under Section 3 of A.P. Assigned Lands (Prohibition of Transfers Act (for short 'Act 9 of 1977') is attracted to the land in question.

For proper appreciation of the above question, it is necessary

to note the definition of assigned land under section 2(1) of Act 9/1977.

> "**In this Act, unless the context otherwise requires,**
>
> 1) "assigned land" means lands assigned by the Government to the landless poor persons under the rules for the time being in force, **subject to the condition of non-alienation** and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings; and the word 'assigned' shall be construed accordingly".

A plain reading of the above definition shows that the land, which was assigned by the Government subject to the condition of non-alienation can only be treated as an assigned land for the purpose of Act 9 of 1977. As a natural corollary, the prohibition of transfer as contained under Section 3 of Act 9 of 1977 is attracted only in cases where the land is assigned subject to the condition of non-alienation.

In the case on hand, the specific case of the petitioner is that the assignment in favour of K.Obulappa in the year 1933 was not subject to the condition of non-alienation. To substantiate the said plea, the learned counsel for the petitioner has relied upon the instructions issued by the Government of Andhra Pradesh in G.O.No.1142, Revenue Department, dated 18.06.1954, under which, the terms and conditions of assignment were promulgated by the State Government for the first time.

Clause 5 of G.O.No.1142, dated 18.06.1954, is as under:

> The assignment of lands shall be subject to the following conditions:
>
> "1) Lands assigned shall be heritable but not alienable.
>
> ……."

It is submitted by the learned counsel for the petitioner that since the assignment in favour of K.Obulappa was made

much prior to G.O.No.1142, dated 18.6.1954, the said assignment was not subject to the condition of non-alienation.

I find force in the submission of the learned counsel for the petitioner, since, admittedly, the condition that the land assigned shall not be alienable was not in force in the year 1933 when the assignment was made in favour of K.Obulappa. Nothing has been placed before this Court to show that the Order promulgated in G.O.Ms.No.1142 dated 18.4.1954 has retrospective application, muchless any material is produced to show that the 'D Form Patta' granted in favour of K. Obulappa contained such a condition. As a matter of fact, even the impugned order dated 12.6.1998 did not reflect that the second respondent had taken any steps to verify as to whether the assignment granted to K.Obulappa in the year 1933 contained any such condition prohibiting alienation. Hence, the impugned order of cancellation of assignment is vitiated by non-application of mind to the relevant aspects and liable to be set aside on that ground alone.

At any rate, admittedly, the impugned order was passed without issuing a show cause notice to the petitioner as required under Section 4(1) of the Act 9 of 1977 read with Rule 3 of the ROR Act.

Section 4(1) of the Act 9 of 1977 runs as under:

> "**4. Consequences of breach provisions of Section 3:-**
>
> (1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may, by order-
>
> (a) take possession of the assigned land, after evicting the person in possession **in such manner as may be prescribed**; and
>
> (b) restore the assigned land to the original

assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to landless poor person in accordance with the rules for the time being in force;"

It is also necessary to extract Rule 3 of the Rules made under Act 9 of 1977, which is as under:

> **3. Procedure for eviction of the transferee and taking possession and restoration of assigned lands:-**
>
> The District Collector or the authorized officer shall, before taking action under clauses (a) and (b) of sub-section (1) of Section 4 of the Act, issue a notice in Form-I to the person who acquired any assigned land in contravention of the provisions of sub-section (2) of Section 3 of the Act. This notice shall be served by delivering a copy to him or to some adult male member of the family at his usual place of abode or to his authorized agent, or by affixing a copy thereof at some conspicuous place of his last known place of residence, or on some conspicuous part of the land acquired by him after the expiry of fifteen days specified in the notice, the District Collector, or the authorized officer shall consider the representation, if any, received with reference to the said notice and pass such order as he thinks fit and proper. If it is held that the provisions of sub-section (1) of Section 3 of the Act have been contravened in respect of any assigned land a copy of the order shall be communicated to the village officer for taking possession of the land and thereupon the land shall be disposed of in accordance with sub-clause (b) of clause (1) of Section 4 of the Act.

In the light of the above mandatory provisions, there can be no dispute that before taking possession of the assigned land after evicting the person in possession, it is mandatory to issue a notice in Form-I and give an opportunity to the person in possession to make his representation against the proposed action. Admittedly, no such opportunity was provided to the

petitioner-Union before passing the impugned order and the assignment of the year 1933 was cancelled on an erroneous assumption that the petitioner-Union had purchased the land in question from the legal heirs of the assignee in violation of the conditions of 'D Form Patta.

It is also relevant to note that under Section 4 of the Act 9 of 1977 an order of eviction and restoration of the assigned land can be passed by the District Collector or any other officer not below the rank of Mandal Revenue Officer authorized by him for the said purpose. Where such an order is passed by the Mandal Revenue Officer, an Appeal lies to the Revenue Divisional Officer under Section 4-A of the Act, and in case such an order is passed by the Revenue Divisional Officer, Appeal lies to the District Collector. Section 4-B of Act 9 of 1977 provides for a further remedy of Revision to the District Collector in respect of the order passed by the Revenue Divisional Officer in the Appeal, or to the Government in respect of any other proceeding.

Nothing has been placed before this Court to show that the Revenue Divisional Officer, who is the Appellate Authority under Section 4-A of the Act 9 of 1977, was authorized by the District Collector to pass an order of cancellation of assignment under Section 4(1) of Act 9 of 1977.

The whole confusion appears to have taken place since the impugned order canceling the assignment was passed by the Revenue Divisional Officer while disposing of an Appeal filed under Section 5-B of the ROR Act. It is true that the first respondent by order dated 8.6.1997, while remanding the Appeal under ROR Act to the second respondent for consideration afresh, observed that since the land involved was an assigned land, a thorough examination of facts was necessary. However, that does not empower the second

respondent to pass an order of eviction and to direct resumption of land under the provisions of Act 9 of 1977, particularly without following the mandatory procedure prescribed under Act 9 of 1977 and the Rules made thereunder. Viewed from any angle the order of cancellation of assignment and directing resumption to Government being not only arbitrary and illegal, but also without jurisdiction is liable to be set aside. The impugned order so far as it relates to setting aside the order passed by the 3rd respondent dated 23.7.1990 under Section 5-A of ROR Act as confirmed in Appeal on 23.2.1996 is also unsustainable being vitiated by non-application of mind to the relevant aspects.

Accordingly, the impugned order dated 12.6.1998 is set aside and the writ petition is disposed of leaving it open to the respondents 1 to 3 to pass appropriate orders afresh after giving opportunity of hearing to the petitioner-Union and all the persons concerned, in the light of the observations made above. No costs.

14.9.2007.

Tjs/Kgr

Note: L.R. Copy to be marked.

***THE HON'BLE Ms JUSTICE G. ROHINI**

+WRIT PETITION No.19258 OF 1998

%Dated 14-09-2007

The A.P.State Electricity Board Employees Union,
Madanapalli Division, represented by its
Divisional Secretary M.Kodandapani,
Madanapalli, Chittoor District.

… Petitioner.

Vs

$ The Joint Collector, Chittoor and seven others

… Respondents.

! Counsel for Petitioner: Mr. Radha Krishna Reddy

^Counsel for Respondents: Govt. Pleader for Assignment &
Mr. P. Indra Prakash

<GIST:

>HEAD NOTE:

? Cases referred